



MINUTES

Huntington Beach Planning Commission

Tuesday, May 24, 2005
Huntington Beach Civic Center
2000 Main Street, Huntington Beach, California 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: P P A P P P P
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman

AGENDA APPROVAL

A MOTION WAS MADE BY FUHRMAN, SECONDED BY LIVENGOOD, TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF MAY 24, 2005, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Fuhrman, Burnett
NOES: None
ABSENT: Dingwall
ABSTAIN: None

MOTION APPROVED

A. STUDY SESSION ITEMS

A-1. ENTITLEMENT PLAN AMENDMENT (PROCESS)

Scott Hess, Planning Manager, presented an overview of the EPA process and Zoning Code provisions.

Discussion ensued concerning criteria for an EPA, the appeal process, and fees.

Chair Ray introduced two UCI students in the audience on assignment as observers of the Planning Commission meeting.

A-2. PROJECT REVIEW PROCESS FOR STUDY SESSION

Discussion ensued about the level of review necessary for small and mid-level projects in advance of the public hearing.

Chair Ray suggested that perhaps staff present a project report when an application is deemed complete, or prior to the project's proposed study session date.

There was discussion about the purpose of holding a study session, who should present (staff and/or applicant), mandatory deadlines, and public notification. Chair Ray indicated that he would provide a written outline of a proposed process based on Commission comments for a subsequent meeting.

AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS)

Staff presented late communications regarding items on the agenda for this evening as well as any corrections to the staff reports.

B. PLANNING COMMISSION COMMITTEE REPORTS

Commissioner Scandura and Commissioner Fuhrman reported on the School District's quarterly meeting with the City.

Commissioner Burnett announced that she is expecting her second child.

D. PUBLIC COMMENTS – Regarding Study Session portion of Meeting – None.

6:30 P.M. – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

PLEDGE OF ALLEGIANCE – Led by Commissioner Livengood

ROLL CALL: *P P A P P P P*
Dwyer, Scandura, Dingwall, Ray, Livengood, Burnett, Fuhrman

AGENDA APPROVAL

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SCANDURA, TO APPROVE THE PLANNING COMMISSION REGULAR MEETING AGENDA OF MAY 24, 2005, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Fuhrman, Burnett
NOES: None
ABSENT: Dingwall
ABSTAIN: None

MOTION APPROVED

A. ORAL COMMUNICATIONS

Steve Stafford, Estate Circle (Crystal Island), voiced concerns related to reproduction fees for City documents, obtaining plans from the Planning and Building & Safety Departments, and annoying false burglar alarms that sound off on the Huntington Beach High School campus.

John Scott, Southeast Huntington Beach Neighborhood Association, voiced concerns about on-going street repairs, and the potential damage to homes that could be caused by Poseidon Resource's proposed desalination plant if it is approved.

Eileen Murphy, Residents 4 Responsible Desalination, voiced concerns about the public comment period for the recirculated draft Environmental Impact Report for Poseidon Resource's proposed desalination plant closing on May 27, 2005.

B. PUBLIC HEARING ITEMS

B-1. APPEAL OF MITIGATED NEGATIVE DECLARATION NO. 04-09/CONDITIONAL USE PERMIT NO. 04-31 (TOYOTA OF HUNTINGTON BEACH): Applicant: Studio IV Architects Appellant: Planning Commissioner John Scandura Request: **MND:** To analyze the potential environmental impacts associated with the implementation of the proposed project. **CUP:** To permit a new Toyota vehicle sales and service facility consisting of an approximately 39,500 sq. ft. sales, office, showroom and service building and an attached multi-level parking structure (inventory, storage and customer parking), a service canopy and grade level parking for display and customers. The existing Toyota vehicle sales and service facility will be demolished. Location: 18881 Beach Boulevard (west side of Beach Boulevard, north of Garfield Avenue) **Project Planner:** Ron Santos

STAFF RECOMMENDATION: Motion to: A) "Approve Mitigated Negative Declaration No. 04-09 with suggested findings and mitigation measures;" and B) "Approve Conditional Use Permit No. 04-31 with suggested findings and conditions of approval."

The Commission made the following disclosures: Commissioner Scandura spoke with Council Members Coerper and Bohr, City staff, Commissioner Livengood, the applicant Bob Miller and his architects, visited the site and other Beach Blvd. dealerships, and drove by similar dealerships in Garden Grove, Costa Mesa, Cerritos, Buena Park; Commissioner Livengood visited the site and a similar project in Garden Grove, and attended the Design Review Board meeting on the project; Commissioner Burnett attended a community meeting held by Toyota; Commissioner Fuhrman met with applicant and toured the site; Chair Ray met with the applicant Bob Miller, visited the site, spoke with Casey Griffin and staff, and drove by similar dealerships in Garden Grove and Irvine.

Ron Santos, Associate Planner, gave a staff report that provided information on the location, surroundings and zoning of the proposed project. He explained the applicant's proposal to demo the existing facility and construct a new 39,500 square foot vehicle sales and service facility with multi-level and at-grade customer parking. He discussed building heights, features and accent treatments, landscaping, a sign/gate at the service entry, and a 2-phase construction plan. He indicated that an environmental assessment was prepared that concluded that the proposal does not pose any significant environmental impacts. He informed the Commission that the City received no opposing comments on the proposal, and that it complies with the goals and objectives of the Urban Design Guidelines. He described the parking structure to have an office-like appearance with windows, and explained how the design screens the cars housed inside the building from public view. He identified communication received from the Environmental Board dated April 8, 2005, and informed the Commission of project-related meetings including a community meeting sponsored by Toyota on February 9, 2005, Design Review Board on February 10, 2005, and the Zoning Administrator on April 13, 2005. He did state that one

call was received from a Toyota customer to relay a positive experience at the dealership, and explained reasons for the project appeal filed by Commissioner Scandura on April 24, 2005.

Commission questions/comments included:

- Zoning of surrounding uses and General Plan consistency
- Building height request of 51.5 feet when Zoning Code Section 211 has identifies a 50 ft. height limit (Section 230.72 provides an exception of 48" to height limits for certain architectural features – project is consistent with that)
- Explanation for line of site exhibit
- Discussion on parapet wall and roof top deck screening of vehicles
- Discussion on the State Transportation Division's April 21, 2005 letter indicating that additional traffic impact analysis will be required; applicant required to submit a traffic impact report to the State; staff's analysis determining that the City and Caltrans thresholds are being met by the project
- Discussion on the Design Review Board's recommendation for a red stripe on the rear of the building

THE PUBLIC HEARING WAS OPENED:

Steve Stafford, Estate Circle, voiced concerns on car carriers making deliveries on Beach Blvd. He suggested that loading and unloading of vehicles take place on-site. He also voiced concerns about the inflatable statues displayed near the street, and possible dangers of illegal extension cord use.

Franz Nalezny, Studio 4 Architects, addressed concerns about car carriers by explaining that the site has a new design to accept car carriers on-site with adequate turning radius on the main service driveway.

Commissioner Scandura asked if the car carriers would need to back up onto Beach Blvd. Mr. Nalezny replied no, and added that all vehicle deliveries take place during off-peak hours, not during mid-day, high-volume traffic.

Commissioner Fuhrman asked if the applicant would be amenable to using a color scheme on the west-facing portion of the building for articulation purposes to create less of a box affect for the apartment residents who face the building. Bob Miller, Toyota Dealer, would not be opposed to considering more color.

Commissioner Burnett asked about the concerns raised on the electrical source for the inflatable statues. Mr. Miller explained that the redesign takes care of the electrical concerns.

Commissioner Fuhrman suggested that high profile vehicles not be parked at the parapet wall facing east. He also asked if the on-site location for car carrier deliveries would be used for other purposes. Mr. Miller said that the area would also serve as public parking during normal business hours, reminding the Commission that all vehicle deliveries will be performed between 12:00 a.m. and 4:00 a.m.

Chair Ray asked about palm trees depicted on the landscape plan along Beach Blvd. Mr. Miller responded that the palms provide compatibility along Beach Blvd.

Commissioner Fuhrman asked about landscaping on the southern portion of the property near the car wash. Mr. Nalenzy described the 10-foot wide landscaped area with canopy trees to create a visual break between the car wash and auto dealership.

Chair Ray asked for the outer perimeter of the canopy trees, and their height at maturity. Mr. Nalenzy answered that the canopy trees are planted in a 24" box, and will be 12 to 14 feet in height, doubling in size within 7-10 years.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Commissioner Scandura explained that the basis for appeal dealt with land use issues. He complimented the work done by staff, but felt that such a highly visible project with significant land use intensification of 203,000 square feet warranted a public hearing. He also voiced concerns related to a 50-foot high parking garage and wall being located near an apartment complex and visible from Garfield Avenue and Beach Blvd. He discussed his concerns about the proposal setting a precedent for other dealerships located on smaller lots who eventually wish to expand. He stated that after researching the City's Design Guidelines, he discovered inadequacies for this type of development and recommended exterior modifications along the south elevations. He proposed a minute action for developing design guidelines that adequately address issues related to parking structures.

Commissioner Livengood was prepared to make a motion.

Chair Ray voiced concerns about the parapet wall on the front of the structure, and the building's office-like appearance suggesting that the Commission consider a condition of approval stating that the parapet wall height be increased to screen cars stored on the roof top deck. He also discussed the need for a traffic study for potential, unidentified impacts that may later require an Entitlement Plan Amendment (EPA). Mr. Santos explained that although it is possible that an EPA may be required based on the requirements of an amended traffic study, it is unlikely. He also stated that Caltrans would conduct the review of the amended traffic study, not the City. Mr. Santos explained that CalTrans did not state opposition to the project, and that the applicant is working with Caltrans and will comply with any requirements imposed.

Discussion ensued on encroachment permits. Chair Ray asked if the zoning code allows for on street loading of vehicles. Mr. Santos advised that many of the auto dealers on Beach Blvd. currently unload on the street, but explained that unloading on Beach Blvd. will be restricted in the future when the travel way is widened, and that the issue should not be conditioned for one dealership.

Commissioner Burnett voiced support for the project, and for vehicles being in public view on the roof top deck. She complimented the applicant on a great

project that addressed residents concerns and included great landscaping features.

Commissioner Scandura complimented the project's facade along Beach Blvd, but had a problem with the lack of windows on the back of the building, suggesting they add windows to the south and west elevations. He asked if the applicant would entertain adding windows and raising the parapet wall. Mr. Miller was agreeable to adding windows. Mr. Nalenzy spoke against raising the parapet wall, explaining the importance of line of site.

Commissioner Fuhrman voiced concerns about light spillage onto Beach Blvd. as discussed in a communication received by the Environmental Board. Mr. Nalenzy explained that all fixtures direct light downwards, and that the issue was addressed during the study session. He also stated that light restrictions do not exist within the guidelines, and that added lighting during the evening and early morning hours offers security and adds safety.

Commissioner Dwyer voiced support for the project and complimented the applicant.

A MOTION WAS MADE BY LIVENGOD, SECONDED BY SCANDURA, TO APPROVE MITIGATED NEGATIVE DECLARATION NO. 04-09 WITH SUGGESTED FINDINGS AND MITIGATION MEASURES, AND APPROVE CONDITIONAL USE PERMIT NO. 04-31 WITH SUGGESTED FINDINGS AND MODIFIED CONDITIONS OF APPROVAL BY REQUIRING CAR CARRIERS TO UNLOAD VEHICLES ON SITE, AND REVISE THE SITE PLAN TO INCLUDE TWO WINDOWS ON THE SOUTH AND WEST SIDES OF THE BUILDING.

Mr. Hess recommended that the Commission not restrict car carriers to unload vehicles on site until a citywide requirement has been established. Chair Ray asked legal counsel to respond. Ms. Mulvihill agreed with staff, categorizing it as unfair because the restriction does not yet apply to other dealerships within the City. Commissioner Livengood asked if the motion second would agree to delete the added condition. Commissioner Scandura agreed.

Commissioner Scandura also asked about protocol in proposing a minute action to the City Council about review of the Design Guidelines in relation to auto dealerships. Chair Ray requested that the proposal be made after voting on the motion.

Commissioner Fuhrman asked if the project proposal should be returned to the Design Review Board for reconsideration of adding windows and articulations, including use of color. Chair Ray directed Commissioner Fuhrman to condition 1 that states, "An alternative architectural treatment may be substituted, subject to review and approval from the Department of Planning."

THE MOTION WAS RESTATED BY LIVENGGOOD TO APPROVE MITIGATED NEGATIVE DECLARATION NO. 04-09 WITH SUGGESTED FINDINGS AND MITIGATION MEASURES, AND APPROVE CONDITIONAL USE PERMIT NO. 04-31 WITH SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL, AND REVISE THE SITE PLAN TO INCLUDE WINDOWS ON THE SOUTH AND WEST SIDES OF THE BUILDING, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Fuhrman, Burnett
NOES: None
ABSENT: Dingwall
ABSTAIN: None

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL - MITIGATED NEGATIVE DECLARATION NO. 04-09; CONDITIONAL USE PERMIT NO. 04-31

FINDINGS FOR APPROVAL – MITIGATED NEGATIVE DECLARATION NO. 04-09:

1. Mitigated Negative Declaration No. 04-09 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of thirty (30) days. Comments received during the comment period were considered by the Planning Commission prior to action on the Negative Declaration and Conditional Use Permit No. 04-31.
2. Mitigation measures avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur.
3. There is no substantial evidence in light of the whole record before the Planning Commission that the project, as mitigated, will have a significant effect on the environment.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 04-31:

1. Conditional Use Permit No. 04-31 to permit a new Toyota vehicle sales and service facility consisting of an approximately 39,500 sq. ft. sales, office, showroom and service building and a 162,650 sq. ft. multi-level parking structure (inventory, storage and customer parking), a service canopy and grade level parking for display and customers will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed project's potential to negatively impact the surrounding neighborhood was analyzed in conjunction with Mitigated Negative Declaration No. 04-09, which concluded that no significant impacts will result with incorporation of appropriate mitigation. MND No. 04-09 considered a noise analysis, traffic generation analysis, geotechnical reports, conceptual water quality management plan, storm water pollution prevention plan, the project design and architecture, pedestrian and vehicular access, circulation and safety, surrounding land uses, and the City of Huntington Beach Urban Design Guidelines.
2. The conditional use permit will be compatible with surrounding uses because the project site is currently developed with a vehicle sales and service center and the proposed project provides for demolition of existing improvements and construction

of a new vehicle sales and service center in conformance with applicable land use regulations and development standards. The project site is located along the City's principal commercial corridor, is surrounded on three sides by commercial uses and is in close proximity to other automobile-oriented uses, including other vehicle sales and service facilities, a car wash and a variety of businesses providing drive-through service (bank, pharmacy, fast food). Existing two-story multi-family dwellings to the west of the subject property are located approximately 120 feet away from the proposed parking structure, which is setback ten feet from the west property line. The conceptual landscape plan provides for a row of trees to be planted in the landscaped setback area between the parking structure and the west property line, thus providing a visual buffer between the proposed buildings and the existing residential property. In addition, the proposed parking structure is designed with a maximum height of 18 feet within 45 feet of the west property line. Consequently, the proposed structure will not exceed the height of the existing apartment buildings within a spacing of 155 feet.

3. The proposed conditional use permit will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance including minimum building setbacks, parking and landscape requirements and maximum building height. No variance(s) to applicable development standards is requested or required.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of CG-F1 (Commercial General – 0.35 maximum floor area ratio) on the subject property. The project site is also located within a General Plan sub-area (6G), which specifically identifies automobile sales as a desired use. In addition, it is consistent with the following goals and policies of the General Plan:

LU 10.1 Provide for the continuation of existing and the development of a diversity of retail and service commercial uses that are oriented to the needs of local residences, serve the surrounding region, serve visitors to the City, and capitalize on Huntington Beach's recreational resources.

LU 10.1.7 Require that parking structures located on commercial parcels abutting residential uses (a) be designed to prevent adverse noise and air emission impacts and (b) incorporate architectural design elements, such as façade articulation, offset planes, and landscape, to provide visual interest and compatibility with the residences.

LU 10.1.12 Require that Commercial General uses be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development including the consideration of incorporation of site landscape, particularly along street frontages and in parking lots.

ED 2.4 Revitalize, renovate and expand the existing Huntington Beach commercial facilities while attracting new commercial uses.

ED 2.4.1 Encourage and assist existing and potential commercial owners to modernize and expand their commercial properties.

The requested conditional use permit will provide for the continuation and expansion of an existing commercial use serving both the needs of local residents (vehicle service and sales) and the surrounding region (vehicle sales). The proposed parking structure is fully enclosed (excepting the top level), thereby providing for the screening of stored/parked vehicles, and features varied roof lines, setbacks and massing offsets. The proposed parking structure also features façade glazing and other attributes consistent with office building architecture as well as a ten foot wide, tree-lined landscape setback along the perimeter. The proposed project features quality site planning, architectural design and a unique character.

MITIGATION MEASURE:

The service drive aisle proposed along the southerly property line shall be gated to prevent public access via Beach Boulevard. Use of the drive aisle shall be limited to Toyota personnel authorized to access the service bay via the roll-up doors on the south side of the service building. Signs shall be installed at the drive aisle entrance, indicating that use of the drive aisle is restricted. The design and location of the gate and signs shall be reviewed and approved by the Departments of Fire, Planning and Public Works prior to installation.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 04-31:

1. The site plan, floor plans, and elevations received and dated January 27, 2005, shall be the conceptually approved design with the following modification:
 - a. A red band, matching that proposed along the front of the building, shall be painted along the rear of the parking structure. An alternative architectural treatment may be substituted, subject to review and approval of the Department of Planning. **(DRB)**
 - b. Two additional windows shall be incorporated into the south and west exterior building walls. The precise location of the (four) additional windows shall be subject to review and approval by the Planning Department.
2. Recyclable scrap construction material and demolition debris shall be recycled to the greatest extent feasible. Prior to issuance of demolition permit(s), the applicant shall submit a plan for identifying recyclable material, a means of recycling and a method of documenting recycling efforts to the Department of Planning, for review and approval by the Departments of Planning, Building & Safety and Public Works. **(Environmental Board)**

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

B-2. APPEAL OF CONDITIONAL USE PERMIT NO. 05-03 (DOO RETAINING

WALL): **Applicant:** Shirley Doo **Appellant:** Planning Commissioner Randy Fuhrman **Request:** To permit the construction of a combination retaining wall/wood fence within the rear yard setback of a through lot. The proposed retaining wall measures five feet in height and will be topped with a wood fence measuring six feet in height for a maximum height of eleven feet. The combination retaining wall/wood fence is proposed with a meandering setback ranging from three feet to five feet eight inches measured from the rear property line. **Location:** 17041 Westport Drive (south side of Westport Drive, west of Blair Lane) **Project Planner:** Paul Da Veiga

STAFF RECOMMENDATION: Motion to: "Approve Conditional Use Permit No. 05-03 with suggested findings and conditions of approval."

The Commission made the following disclosures: Commissioner Dwyer visited the site and spoke with neighbor Carole Garrett and a property rights attorney; Commissioner Fuhrman recused himself from action on the item to avoid any possible conflict of interest due to bias or impartiality; Commissioner Scandura described his past participation on Planning Commission action related to through-lot development, spoke with staff and drove by the site; Commissioner Burnett met with Carole Garrett and visited the site; Commissioner Livengood described his past participation on Planning Commission action related to through-lot development, spoke with the applicant, Carole Garrett and Nora Gibbs, and walked the property; Chair Ray described his past participation on Planning Commission action related to through-lot development, spoke with applicant, Carole Garrett and Norma Gibbs and visited the site.

Paul Da Veiga, Associate Planner, provided a staff report that outlined the project's location and surroundings, described existing through-lots fronting Westport and Roundhill Drives, described elements proposed in the Conditional Use Permit (CUP), indicated that the request was approved by the Zoning Administrator on April 20, 2005, identified the number of individuals who spoke in support and opposition to the project, identified the reasons for appeal as land use compatibility and a detriment to the general welfare of the persons residing in the vicinity, addressed concerns related to the project's visual impacts, massing, landscape setbacks and wall materials, and provided staff's recommendation to approve the request.

Commission questions/comments included:

- Proposed and existing wall heights and measurement criteria, including permit approval dates
- Correction to the number of through lots identified in the staff report on Westport Drive
- Explanation of RL Zoning (Residential Low Density)
- Discussion on whether surrounding homes were built in accordance with the development plans and/or standards existing at the time they were built (Confirmed)
- Does the current code include standards or guidelines pertaining to earth movement or slippage affecting retaining walls? (explanation of applicable code requirements, and the retaining wall inspection process)

- Discussion on Uniform Building Code (UBC) standards and guidelines relating to the project's location and how it traverses the Inglewood earthquake fault line
- Explanation of the 2 to 1 tree replacement condition placed on the property, and the applicants proposal to increase the front setback area and add 3 new trees

THE PUBLIC HEARING WAS OPENED:

Norma Gibbs, Huntington Beach, spoke in support of the item, discussed her past activity in providing support for through-lot development, and voiced concerns about why the property owner has faced such difficulty in developing her own property when the Zoning Administrator (ZA) approved her request.

Adrienne Parks, Westport Drive, spoke in support of the item, calling the wall proposal well designed, both aesthetically and structurally. She also discussed Commissioner Fuhrman's participation on previous through-lot discussions and criticized certain Roundhill Drive residents for trying to govern the property rights of others.

Richard Batistelli, President of the HHPOA, spoke in opposition to the item, legal misconceptions about enforcing the HHPOA CC&R's, referenced late communication submitted by the HHPOA's attorney regarding membership and CC&R enforcement, and stated that variance approvals of this type are detrimental to older communities.

Chair Ray informed the public of late communication mentioned by Mr. Batistelli as being received by Attorney Stanley Feldsott, Law Offices of Feldsott, Lee, Iger & Lew.

Shirley Heras, Westport Drive, spoke in opposition to the item. A 40-year resident of Huntington Beach, she discussed the different types of walls and embankments within the Harbor, urging residents to abide by the HHPOA CC&R's and described the request as cutting edge, but stated that it was incompatible with the neighborhood.

Carole Garrett, Huntington Beach, spoke in opposition to the item and in favor of the 51 property owners who face lots with similar retaining walls. She discussed documentation related to slope enhancement and retaining wall activity occurring during the past 40 years, the City Council's recent decision to deny a similar request, and that the proposal is detrimental to the tract and community. She urged the Commission to deny the request.

Mike Palikan, Huntington Beach, spoke in support if the item. He disagreed with information provided by Mr. Batistelli on HHPOA membership and opinion. He also described the ZA as qualified to approve the request, and addressed the reasons for the appeal itself, including land use compatibility and the positive impacts the project brings to the neighborhood through a responsible, well-planned development for an older community, and detrimental, because it makes homeowners take notice of their dilapidated properties.

Jackie Satterthwaite, Mariana Circle and Gilbert Island resident for 40 years, spoke in support of the item and described the various looks of walls, decks, trees and landscaping throughout the community, the 27 through-lots on Gilbert Island and stated that the HHPOA does not enforce the CC&Rs, and described the request as a way to improve safety for children and inhibit erosion.

Dave Lake, Concord Lane, spoke in support of the item. As a through-lot owner, he expressed his disappointment with ice planted slopes that fail to rejuvenate themselves, and others infested with weeds. He also discussed his review of the HHPOA's CC&Rs and how he could not find any information indicating that the applicant was in violation. He described the proposal as an attractive improvement to the neighborhood and stated that those opposing the project will say no to anything other than iceplant-covered slopes.

Shirley Doo, Westport Drive, spoke in support of the item and thanked the Commission for their time. She wanted to clarify she is not violating the HHPOA's CC&Rs as stated by Mr. Batistelli or Ms. Garrett because the HHPOA does not represent 1200 homeowners and does not have an architectural committee to review such a request. She explained how she was unaware that the HHPOA would not support her plans for property improvement when she purchased her property in June 2004, and expected to be able to build similar to other walls within the neighborhood. She described herself as artistic, and that her proposal will make the slope attractive. She also described the automatic water system in place for landscaping and voiced concerns about whether or not the request involved arguing over a wall or the view, asking if she has the ability to request that Roundhill neighbors change their property frontage. She stated that too much time had been spent on this request, and that everyone should take care of his or her own property.

Carrie Thomas, Huntington Beach, spoke in favor property owner rights, and explained her experience as a past Planning Commission Member with through-lot development. She described the presence of both attractive and ugly walls within the community and suggested that the applicant consider a compromise to build the retaining wall at a height of 8 feet, voicing concerns about 11 to 12-foot walls being too massive. She also discussed the importance of considering the rights of all homeowners, suggesting that the Commission not take any action at all, and allow property owners to handle their own business in court, if necessary.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED

Commissioner Livengood described the City Council's action on through-lot development as "status quo", in other words, do what has been done in history. He also agreed with a statement made by a resident who described the area as "hodge podge", stating that no wall uniformity exists within the harbor and that anything would work to improve the area. He stated that CC&R's are not enforceable by the City and voiced concerns about "tilt-up" style walls. He voiced support for the project because of the setbacks (minimum 3 feet and 5 feet), and for the applicant including a built-in water system for landscaping.

Commissioner Dwyer asked about how CC&R's or HHPOA restrictions effect City code requirements. Leonie Mulvihill, Commission Counsel, responded that the

CC&R's are not enforceable by the City, only by their respective homeowners and homeowner's associations.

Commissioner Scandura stated that the applicant is well within her rights to file for a CUP that allows for development within the 15-foot setback given the City Council's recent decision for "status quo" on through-lot development. He also stated that the City will not enforce CC&Rs because it would greatly effect City development standards, and that through-lots are not easements or right-of-ways, they belong to the property owner. He described the project as a well-designed enhancement to the area, and stated that concerns about screening the slope have been addressed with quality material and a tree replacement policy. He also complimented the landscaping features and voiced support for the project.

Commissioner Burnett described the issue as difficult. She stated that she viewed videotape of previous public hearings on through-lot development, including comments made by several public speakers. She also discussed the time she spent time with resident Carole Garrett and how her visit to the area revealed walls in disrepair, overgrown with unattractive vegetation, or massive walls with a zero lot line that she found to be appalling. She explained how Roundhill Drive is narrow at 36 feet wide, while the average street is 50 feet wide. She also voiced concerns about the sidewalk width on Roundhill being 24 inches. She mentioned the City Council's decision to remain "status quo" on through-lot development, and explained how each request must be decided on its own merits, not what is stated within the CC&R's. She complimented the applicant for the extraordinary measures for setbacks to maintain lot line integrity, beautiful drawings and pleasing landscaping, all for which she is in support of.

Commissioner Dwyer informed the public that audio speakers are provided in the Caucus Room area so that Commission Members and staff can hear the meeting while they temporarily leave the Council Chambers.

Chair Ray thanked Norma Gibbs and Mike Pallikan for their comments. He commented on the properties that have pleasing rear yards with very nice walls and landscaping. He also mentioned some properties that are ok, and some that need great attention to bring them up to City standards. He described the "status quo" decision by City Council and property owner's rights through the CUP/public hearing process. He discussed two issues including what is the impact of the improvement on the property itself, and it's effect on surrounding properties. He described some area walls as prison-like (too tall and massive with gray block material) that do not enhance surrounding properties. However, he stated that the applicant's proposal provided artistic value with quality landscaping and tree replacement. He voiced support for the proposal and he concurred with former Commissioner Thomas about reducing the height of the retaining wall, wondering if the Commission would consider action to reduce the wall height to 8 or 9 feet.

Commissioner Scandura disagreed with Chair Ray's request to reduce wall height because of the applicant's dedication to maintain 3 to 5 foot setbacks. He also asked staff if the setbacks identified in January 2005 are what will be approved with the request. Mr. DaVeiga confirmed and also explained that the wall height varies certain areas with reduced sections of 9.5 feet

Chair Ray asked if the applicant needed to provide an irrigation plan. Mr. Da Veiga responded that condition of approval no. 2, on Attachment 1.2 describes irrigation plans that will be submitted during plan check.

A MOTION WAS MADE BY SCANDURA, SECONDED BY LIVENGGOOD, TO APPROVE STAFF'S RECOMMENDATION.

Commissioner Livengood asked about condition of approval no. 2 on Attachment 1.2 and whether or not to include an irrigation plan within the setback areas. Scott Hess, Planning Manager, referred to the code requirement listed under condition no. 1.a. on Attachment 6.2.

Commissioner Burnett asked if it were possible to condition the project that no future plans for a swimming pool would be allowed without City approval. Mr. Da Veiga explained that a request for a swimming pool would require the applicant to submit plans through the Building Department plan check process.

Chair Ray asked if the motion maker and second would consider amending the motion by reducing the retaining wall in each section by 1 foot? Commissioner Scandura explained that the varying heights, along with mature trees that will provide a wall screen in the future make the request unnecessary so he denied the amendment request.

A MOTION WAS MADE BY SCANDURA, SECONDED BY LIVENGGOOD, TO APPROVE CONDITIONAL USE PERMIT NO. 05-03 WITH SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett
NOES: None
ABSENT: Dingwall
ABSTAIN: Fuhrman

MOTION APPROVED

FINDINGS AND CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 05-03

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the establishment and maintenance of a combination retaining wall/wood fence involves negligible or no expansion of use beyond that previously existing, therefore no further environmental review is necessary.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 05-03:

1. Conditional Use Permit No. 05-03 for the establishment and maintenance of a combination retaining wall/wood fence with a maximum height of 11 feet at a staggered setback of three feet to five feet eight inches in lieu of the maximum height of 42 inches allowed within the rear 15-foot setback of a through lot will not be

detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The wall is proposed with quality materials including split face concrete block and a decorative wood fence design which will be aesthetically appealing when viewed from the street. Several of the through lots along Westport Drive have been developed with similar walls.

2. The conditional use permit will be compatible with surrounding uses that consist of properties developed with similar walls within the rear yard setback. The adjacent property to the west consists of a 10-foot high combination retaining/block wall at the rear property line. The subject wall will have setbacks that vary between 3 feet to five feet eight inches based on the staggered wall design. Landscaping is proposed within the setback, which will soften the appearance of the wall when viewed from Roundhill Drive.
3. The proposed conditional use permit will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO). The HBZSO allows for a deviation to the maximum height requirements within required setbacks with the approval of a conditional use permit.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Residential Low Density on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:
 - a. Avoid building materials, colors, and construction elements that visually dominate their setting and contrast significantly with the character of the neighborhood (LU 9.1.2.b).
 - b. Include an adequate landscape setback along the street frontage that is integrated with abutting sidewalks and provides continuity throughout the neighborhood. (LU 9.2.1.e)

The project will be developed with a landscape setback ranging from three feet to five feet eight inches, which will improve the aesthetics along the frontage of the property and soften the appearance of the proposed wall. In addition the use of split-face block combined with a decorative wood fence will break up the massing of the proposed wall.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 05-03:

1. The site plan, floor plans, and elevations received and dated January 25, 2005 shall be the conceptually approved design.
2. Prior to issuance of block wall permits a planting and irrigation plan shall be reviewed and approved by the departments of Planning and Public Works.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents,

officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

- B-3. VARIANCE NO. 04-08 (DUBAR RESIDENCE):** Applicant: Patrick Dubar
Request: To exceed the maximum two foot cut and fill grading limitation for the construction of a 2,064 square foot pool cabana and a 1,657 square foot subterranean theatre/wine room with a cut in grade of approximately seven feet six inches and a swimming pool with a cut in grade of approximately eleven feet.
Location: 6741 Shire Circle (Terminus of Shire Cir., east of Quarterhorse Lane)
Project Planner: Paul Da Veiga

STAFF RECOMMENDATION: Motion to: "Approve Variance No. 04-08 with suggested findings and conditions of approval."

Commission disclosures: Commissioner Dwyer had none; Commissioner Scandura visited the site, spoke with staff and homeowner to the east of the proposed project; Commissioner Livengood visited the site and spoke with the applicant Tony Valentine and neighbors Gerald Chapman and Carrie Thomas; Commissioner Burnett walked the property with Taylor Von Drake; Commissioner Fuhrman spoke with staff and Gerald Chapman; Chair Ray visited the site, received a communication from Carrie Thomas, met with Tony Valentine and Taylor Von Drake and spoke to Gerald Chapman.

Paul DaVeiga, Associate Planner, provided a staff report and identified changes to the conditions of approval (condition 1 on Attachment 1.2 – add additional language that would identify the exact components on the site plan that are being received or are under the purview of this variance, and identify the final plans as those submitted on November 8, 2004.

Mr. DaVeiga provided information on the proposal including location, surroundings and land use designation. He provided a front view of the existing home and discussed the open space corridor, location of the pool cabana and issues related to topography (steep slope grade, limited developable area in open corridor, height and amount of cutting). He also discussed the project's compatible design features (rock formations and landscaping, semi-subterranean cabana), and stated staff's recommendation to approve the request was based on topography, land-related hardships and past approvals of similar variance requests in the area.

Commission questions/comments included:

- Retaining wall visibility (explanation of how the rock formations and mask the presence of a retaining wall)
- Sprinkler system requirements (parameters are determined during the plan check process)
- Estimated timing for completion of the equestrian trail in the open corridor that will exit at Ellis Avenue (could not be identified until the applicant consolidates the encyclopedia lots, subject to title and ownership issues)
- Swimming pool lots (must be consolidated prior to final inspection)
- Consequences behind the encyclopedia lots not being regulated by the Homeowners Association (HOA), and the City's lack of involvement
- Fencing and consistency requirements related to the existing view and solid fence types on opposite sides of the property that were approved under separate permits
- Plans to remove a large mound of dirt on the northern portion of the property
- Explanation of the 2-foot cut-and-fill provision within the Ellis/Goldenwest Specific Plan (written to maintain topography)
- Discussion on the open space corridor with a 100-foot wide easement and how the location of existing residences inhibit the opportunity to terrace a swimming pool in the area
- Discussion on the possibility of the proposal setting a precedence for future development and variance requests
- Explanation on why the proposal is not affected by building provisions within the Specific Plan that address limited use related to encyclopedia lots
- Future plans by the property owner to subdivide the property
- Explanation of provisions within the Specific Plan that allow for single-family residences, accessory units and pools

THE PUBLIC HEARING WAS OPENED:

Gordon Watson, HOA Architect and Committee Member, spoke in support of the item. He explained that his residence has a complete view of the proposed pool and cabana, and that he is most impacted by the construction work. As a member of the HOA's architectural committee and HOA president for the past 3 years, he was in charge of the Dubar residence and discussed the project's extreme topography and limited property value unless you allow the owner to cut into the grade. He stated that there was no cause for erosion or visual impacts, and that the request would not set a precedence of any significance, being that only one lot remains unbuilt in the area. He explained that grading change is reasonable and brings value to property and the HOA, and adds beauty to the area.

Bob Thorton, Architect for the applicant, spoke in support of the item and discussed the factors behind constructing a cabana within an existing slope. He provided drawings and described how the project would look if the applicant complied with the 2-foot grade differential, and why a step structure is preferred. He explained how the request requires that a retaining wall be provided, and how the limited amount of buildable area on site creates a unique situation. He identified his project team and was available for questions.

Carrie Thomas, Huntington Beach, voiced concerns about the project's encyclopedia lots not being regulated by the HOA, and that no other development exists on these lots in the quarter section. She discussed annexing lots into the HOA but was cautious about setting a precedent by allowing the owner to build on them. She stated that the equestrian improvements should be made first, and that the fencing should replicate what already exists, a split-rail (open) type for consistency purposes. She described the proposal as a beautiful project but had concerns about cutting and filling.

Micheal Leifer, Attorney for the Applicant, spoke in support of the item. He discussed the number of neighborhood variances granted by staff and stated that the purpose of historic variances apply to tonight's request. He discussed the cut and fill restrictions within the Specific Plan that refer to a variance requirement for planting trees 2 feet or greater in height. He cited similar examples of variance requests, and discussed policies that support existing variances, explaining that they are the same policies that apply to this request. He described the project as first class, and presented to the Commission a number of letters in support of the project by the surrounding property owners who are most affected.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED

Commissioner Scandura asked if current restrictions exist for building on encyclopedia lots. Mr. Da Veiga responded that any restrictions or limitations were included as part of the Land Use section of the old zoning code which no longer applies.

Commissioner Scandura voiced concerns about dirt hauling and requested that Mr. Valentine, Project Manager, respond to the number of cubic yards of dirt excavated to date. Mr. Valentine responded that approximately 1000 cubic yards have been removed. Commissioner Scandura asked for the number of truckloads of fill that will be removed. Mr. Valentine responded approximately 250 truckloads hauled out through the property and onto Ellis Street.

Commissioner Scandura provided support for staff's recommendation, and discussed the standard construction hours of 7:00 a.m. to 8:00 p.m. provided on Attachment 4.4, suggesting they be modified to 8:00 a.m. to 5:00 p.m.

Commissioner Livengood was prepared to make a motion.

Commissioner Fuhrman asked Mr. Watson, HOA Architect, if the project has received approval from the HOA's Architectural Committee. Mr. Watson responded that the Committee hadn't voted yet due the encyclopedia lots and the question of ownership.

Commissioner Fuhrman asked Mr. Watson if the topography of the area by the pool would be maintained or camouflaged, given that the grade is at least 20 to 23 feet from the west to the east. Mr. Watson responded that the rockwork built into the hill makes it the most non-intrusive of fenced pools built in the area and will enhance the open space area.

Commissioner Burnett discussed the expense of cutting and filling, and described the applicant's request as reasonable and appropriate.

Chair Ray asked for the code requirements related to loads of dirt hauled by trucks, voicing concerns about the dirt road leading to Ellis Avenue that may produce fugitive dust. Mr. Da Veiga responded that the Public Works department will review a precise grading plan submitted by the applicant. Terri Elliott, Civil Engineer, further explained that hauling of more than 5000 cubic yards of dirt requires a truck route, and in this case the amount of dirt is less. She also explained measures to control fugitive dust can be included as part of the clean up requirements, and that the California Vehicle Code allows for trucks to haul dirt without being covered.

Mr. Da Veiga asked the applicant if they would accept changing the recommended construction hours to those suggested by Commissioner Scandura. Mr. Valentine responded that preferable hours would be 7:30 a.m. to 5:30 p.m., and also addressed dirt-hauling concerns by explaining that the site has a meter on it for water to mitigate fugitive dust. Commissioner Livengood suggested that Saturday construction hours be limited to 8:00 a.m. to 3:00 p.m. Mr. Valentine agreed.

A MOTION WAS MADE BY LIVENGOD, SECONDED BY BURNETT, TO APPROVE VARIANCE NO. 04-08 WITH SUGGESTED FINDINGS AND MODIFIED CONDITIONS OF APPROVAL (CONDITION 1.2, ITEM 1 – SITE PLANS, FLOOR PLANS AND ELEVATIONS PERTAINING TO THE POOL AND CABANA STRUCTURE ONLY DATED NOVEMBER 8, 2004 TO BE THE CONCEPTUALLY APPROVED LAYOUT; ITEM 4.4 – CHANGE HOURS OF CONSTRUCTION TO 7:30 AM TO 5:30 PM, MONDAY THROUGH FRIDAY, AND 8:00 AM TO 3:00 PM ON SATURDAY.

Mr. Hess stated that staff does not support placing a restriction on construction hours, explaining that such action is not typical for a large, buffered lot area.

Commissioner Scandura voiced concerns that the hours of construction conflict with daily school activity.

Commissioner Fuhrman voiced concerns about the lack of a qualified reason for the applicant to request a swimming pool with a cut in grade of approximately eleven feet when the building limitations were present within the Specific Plan at the time the applicant purchased the property.

Commissioner Dwyer stated that although he supports the project, he opposed the motion because of the modified hours for construction. He discussed fairness in relation to other projects approved by the City, and the difficulty in enforcing construction hours that deviate from the standard hours identified in the zoning code.

Commissioner Livengood amended his motion by removing restrictions on the hours of construction. Commissioner Scandura seconded the amendment.

Commissioner Livengood asked staff to address Commissioner Fuhrman's concerns related to the swimming pool location. Mr. Da Veiga provided an

explanation of how the swimming pool is being cut into the grade of the hill on the property.

Commissioner Livengood amended his motion to include the restricted hours of construction as 7:30 a.m. to 5:30 pm, Monday through Friday, and 8:00 a.m. to 3:00 p.m. on Saturdays. Commissioner Scandura seconded the amendment.

Commissioner Dwyer stated that a code amendment would be the appropriate method to change hours of construction in residential districts, not including them as part of the conditions of approval. He also stated that restrictions of this type could not be fairly policed.

Chair Ray commented that the Commission has imposed similar conditions on other projects in the past.

Ms. Elliott stated that the building permits allow for construction hours of 7:00 a.m. to 8:00 p.m., and that the hours the Commission is considering is similar to the hours allowed for hauling.

Chair Ray suggested that the Commissioners Livengood and Scandura consider keeping the hours of construction as recommended by staff, but restrict the hours of dirt hauling activity.

Ms. Elliott explained that a haul route must be obtained from the Public Works Department.

Commissioner Livengood withdrew his motion.

A MOTION WAS MADE BY RAY, SECONDED BY LIVENGOOD, TO DIRECT THE APPLICANT TO APPLY FOR A TRUCK HAUL ROUTE PERMIT WITH HOURS OF ACTIVITY RESTRICTED TO 8:00 A.M. TO 5:00 P.M., MONDAY THROUGH FRIDAY, WITH HAULING NOT PERMITTED ON SATURDAYS, SUNDAYS AND FEDERAL HOLIDAYS.

Commissioner Burnett questioned the need for a hauling permit that would cause the applicant to pay additional costs when no complaints have been received because they are already respectful of the neighbors. Ms. Elliott explained that a truck-hauling permit is free and can be obtained over the counter in the Public Works Department. Commissioner Fuhrman asked if the applicant would be required to obtain such a permit if the Commission did not add such a condition. Ms. Elliott responded no, because such a permit is typically required for trucks hauling over 5000 cubic feet of dirt.

ACTION ON THE MOTION WAS AS FOLLOWS:

AYES: Dwyer, Scandura, Ray, Livengood, Fuhrman
NOES: Burnett
ABSENT: Dingwall
ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY RAY, SECONDED BY BURNETT, TO APPROVE VARIANCE NO. 04-08 WITH SUGGESTED FINDINGS AND MODIFIED CONDITIONS OF APPROVAL (CONDITION 1.2, ITEM 1 – SITE PLANS, FLOOR PLANS AND ELEVATIONS PERTAINING TO THE POOL AND CABANA STRUCTURE ONLY DATED NOVEMBER 8, 2004 TO BE THE CONCEPTUALLY APPROVED LAYOUT, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett
NOES: Fuhrman
ABSENT: Dingwall
ABSTAIN: None

MOTION APPROVED

FINDINGS FOR APPROVAL - VARIANCE NO. 04-08:

1. The granting of Variance No. 04-08 to exceed the two-foot cut and fill limitation for the construction of a 2,064 square foot pool cabana, a 1,657 square foot subterranean theater/wine room, and a swimming pool will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. The slope gradient on the subject property is more severe than other similar properties within the quarter section, which sets the property apart from others with relatively flat grades. Variances for similar requests have been granted on properties with similar constraints including slope gradient and open space corridor. A variance to allow a six-foot cut into the existing grade for a swimming pool was approved for the subject site under Conditional Exception No. 86-48 on August 5, 1986. The former swimming pool was located in the general area of the newly proposed pool cabana and was issued based on the land-related hardships regarding the existing slope gradient and location of the open space corridor. Therefore, the granting of the variance will not be a grant of special privilege inconsistent with other properties in the vicinity and under an identical zoning classification.
2. Because of special circumstances applicable to the subject property, including the topography of the site and location of existing improvements, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The property is encumbered by a 100-foot wide open space corridor that traverses the entire site and renders approximately 40 percent of the site undevelopable. The existing residence and paved surfaces occupy the remaining portion of flat land. The remainder of the site contains a substantial slope gradient that results in the need for a variance. The special circumstances of the site including the topography and existing improvements necessitates the variance to building a level swimming pool and pool cabana within the remainder of the site. The strict application of the zoning ordinance in this case, would deprive the property owner of a privilege enjoyed by other properties in the vicinity.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights. In order to develop the remaining portion of the subject property with a swimming pool and cabana structure, portions of the existing slopes will necessitate a cut that exceeds the two-foot cut/fill limitation. The need for the

variance is based on the lack of flat land on the site coupled with the topography of the site.

4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The pool and cabana structure will be substantially integrated into the existing topography and will be located at a lower grade level than adjacent properties. The area surrounding the pool will include lush landscaping, several trees, and rock formations to allow for a design that has been integrated into the topography and provides a visual buffer to neighboring residences. The pool cabana is predominately below grade at its closest point to adjacent residential property and the roof peak is lower than the adjacent property line wall. Therefore, there will be no detriment to the public welfare in the same zoning classification as a result of the development.
5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Residential Low Density on the subject property, which prescribes the orderly development of a residential area. It is consistent with the following policies:
 - a. Avoid building materials, colors, and construction elements that visually dominate their setting and contrast significantly with the character of the neighborhood. LU9.1.2
 - b. Require that all new residential development within existing residential neighborhoods (i.e., infill) be compatible with existing structures, including the: use of building heights, grade elevations, orientation, and bulk that are compatible with the surrounding development and maintenance of privacy on abutting residences. LU9.2.1

The location of the proposed structures maximizes the use of the natural topography as they are integrated into the existing topography, below the fence line of adjacent single-family homes located to the east. Design features such as rock formations and landscaping around the perimeter of the swimming pool act as a visual buffer and result in negligible impacts to views from adjacent residences. Neither the swimming pool nor pool cabana will contrast with the character of the neighborhood that has been developed to retain the natural topography. The project does not reduce the privacy of the adjacent properties by the proposed cut into the grade, building siting, or height of the proposed pool cabana.

CONDITIONS OF APPROVAL – VARIANCE NO. 04-08:

1. The site plans, floor plans, and elevations pertaining to the swimming pool and cabana structure only, received and dated November 8, 2004, shall be the conceptually approved layout.
2. Prior to final inspection of the swimming pool, a recorded copy of the final parcel map for the consolidation of Lot 4 of Tract No. 11473 plus Lots 53-58, Fairview Addition to Huntington Beach shall be provided to the Planning Department.
3. Prior to any further grading on-site and removal of dirt, a truck haul plan shall be approved, and a permit shall be issued by the Department of Public Works. In

addition, a grading permit from the Department of Public Works is required for all grading activities on the subject site.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

C. CONSENT CALENDAR

C-1. PLANNING COMMISSION MINUTES DATED MARCH 8, 2005

RECOMMENDED ACTION: Motion to: "Approve the March 8, 2005 Planning Commission Minutes as submitted."

A MOTION WAS MADE BY RAY, SECONDED BY FUHRMAN, TO APPROVE THE MARCH 8, 2005 PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Fuhrman
NOES: None
ABSENT: Dingwall, Burnett (out of room)
ABSTAIN: None

MOTION PASSED

C-2. PLANNING COMMISSION MINUTES DATED APRIL 12, 2005

RECOMMENDED ACTION: Motion to: "Approve the April 12, 2005 Planning Commission Minutes as submitted."

A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SCANDURA, TO APPROVE THE APRIL 12, 2005 PLANNING COMMISSION MINUTES AS MODIFIED, BY THE FOLLOWING VOTE:

AYES: Dwyer, Scandura, Ray, Livengood, Burnett, Fuhrman
NOES: None
ABSENT: Dingwall
ABSTAIN: None

MOTION PASSED

D. NON-PUBLIC HEARING ITEMS – None.

E. PLANNING COMMISSION ITEMS

E-1. PLANNING COMMISSION COMMITTEE REPORTS – None.

E-2. PLANNING COMMISSION COMMENTS

Commissioner Dwyer – voiced concern about changing construction hours as a condition of approval; recommended minute action to the City Council to change the code.

Commissioner Scandura – complimented Terri Elliott on her suggestion to the Commission to incorporate a condition requiring a truck haul plan and permit.

Commissioner Dingwall – Absent.

Commissioner Ray – extended continued good health to Commissioner Fuhrman's mother; wished Commissioner Dingwall a speedy recovery; and thanked the secretary for sitting-in for Robin Lugar at this meeting.

Commissioner Livengood – complimented the Planning Commissioners for the efficient manner in which tonight's meeting was conducted.

Commissioner Burnett - stated that she attended a Design Review Board (DRB) meeting, found the DRB to be efficient, positive and respectful, and she encouraged the Commissioners to also attend.

Commissioner Fuhrman – thanked the Commission for their support during a recent family members health crisis and thanked Debbie Cook for her faith in him when she appointed him as a Planning Commissioner.

F. PLANNING ITEMS

F-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING

Scott Hess, Planning Manager – reported on the Planning Department items heard before the City Council on May 16, 2005

F-2. CITY COUNCIL ITEMS FOR NEXT MEETING

Scott Hess, Planning Manager – reported on the Planning Department items scheduled before the City Council on June 6, 2005.

F-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING

Scott Hess, Planning Manager – reviewed items for the regularly scheduled meeting of June 14, 2005.

G. ADJOURNMENT: Adjourned at 11:10 p.m. to the next tentatively scheduled meeting of June 14, 2005.

SH:HF:rl

APPROVED BY:

Scott Hess, Acting Secretary

Steve Ray, Chair